

Committee of Thirteen Report

October 10, 2006

The Committee of Thirteen of the Benton County Quorum Court met Tuesday, October 10, 2006 at 5:00 P.M. in the Quorum Court Room, County Administration Building, Third Floor, 215 East Central, Bentonville, Arkansas.

12 JPs Present:	Adams, Allen, Harrison, Hill, Moore, Schindler, Sheridan, Stephenson, Summers, Tharp, Wolf, Wozniak
1 Absent:	Hill
Others Present:	County Judge Gary Black, Ed Gartin, Richard McComas, Barbara Ludwig, Major Gene Townsend
Media:	Jennifer Turner – Daily Record, Michelle Burhenn – Morning News

JP Tim Summers called the meeting to order at 5:00 p.m.

PUBLIC COMMENTS:

Don Day stated that he noticed that the only time allowed for public comments was at the beginning of the meeting, and that if the Quorum Court wants the public to be involved, they should allow time after the agenda items for public comments.

Bill Millager stated that he had developed a pie chart illustrating the distribution of expenses among various departments in the County. He said that he noted on the 5-Year Road Plan that there is a Roads Advisory Committee which is supposed to meet once a year or as needed, and asked what the status of it was. JP Summers stated that that question should be addressed to the County Judge.

NEW BUSINESS:

JP Summers stated that a Resolution asking for authorization to apply for a grant will need to be discussed, and JPs Schindler and Wozniak will be sponsoring it. JP Adams made motion to add the Resolution to the agenda, seconded by JP Sampier. JP Summers asked for discussion. JP Schindler recognized Bob Johnson and Bill Sharp of the Veteran's Council of Northwest Arkansas and asked them to explain what the grant will be used for. Bill Sharp described the walking trail that is being proposed, and stated that it will be totally handicapped accessible and circle the existing Veteran's Wall of Honor in Bella Vista. JP Stephenson stated that changes to a lease are referenced in the letter from Grants Administrator Kathy Bannister, and asked for an explanation of what is being leased. Kathy Bannister stated that the lease agreement is a required form for the grant application. She said that State Department requires the County to act as lessee, and the Veteran's Council to act as lessor, and the lease agreement states that the Veterans will maintain the premises for 15 years. She said they do not want to just hand the money to the county without that lease agreement. JP Stephenson asked who owned the property. Kathy Bannister said that the Veterans own it, but the grant has to run through the county. JP Wolf asked who would be responsible for the maintenance. Kathy Bannister stated that the Veterans would be responsible. JP Wolf asked if that is in the lease. Kathy Bannister stated that it is, and asked County Attorney Ed Gartin if that was the way he read it. Ed Gartin stated that the original lease did not read that way, but he transferred those responsibilities back to the owners of the property when he made revisions to the lease and the County will have no responsibilities. He said they would have a copy of it at the Quorum Court meeting. Kathy Bannister stated that the lease will not be signed unless the grant is awarded.

JP Sheridan said he is assuming then that the attached Resolution is invalid. Ed Gartin stated that the Resolution has undergone some revisions and deletions, but as they can see there is a certain indefinable quality to it which would suggest in a way, that the County is the lessor rather than the lessee and certainly would have a responsibility to provide the necessary resources to maintain the facility for 15 years. He said that under the lease, they have flip-flopped that responsibility back to the veterans. JP Sheridan stated he is referring to the third “whereas”, and asked if that would be corrected in the Resolution to clarify that, because as it is written it basically says that the County is the responsible party. County Attorney Ed Gartin stated that one of the oldest legal principles that he is aware of is called the “Golden Rule” which means that whoever has the gold makes the rules, and in this case the State has the gold, so they are making the rules. He said they tried to flip-flop the responsibility to make sense and match up the Resolution with the lease, and they have been successful so far. He added that what the Resolution gives, the lease taketh away. JP Sheridan asked if they would be provided a copy of the lease that they could analyze. Kathy Bannister said she could do that for Quorum Court, and the Director at the State Department has sent it to the Attorney General, and he has not approved it yet. She said they are moving forward as if it will be approved, and that the Director anticipates that it will. She said that they do not make changes in the forms without approval from the Attorney General, and a lot of times will not even entertain changes. County Attorney Ed Gartin said that the first revisions were turned down. JP Sheridan stated that the deadline is October 27th, and they are looking at voting on something that he would like to see clarified. Kathy Bannister stated that they just need the Resolution voted on this month, and they can look at the lease later. JP Sheridan stated that he would like to see the lease before the final vote on the Resolution. JP Sampier asked if it would be fair to say that in order to get the grant that the Resolution has to be worded a certain way to satisfy the State, and they will then work out the details as to who will maintain it. Ed Gartin stated that that is correct. JP Tharp stated that he is 100% in favor of the Resolution, and all they are dealing with are the mechanics of getting the Resolution to the Quorum Court, and he will also support it there.

JP Summers noted that he had made a mistake in not calling for a vote on the original motion to add the Resolution to the meeting agenda. Motion passed by unanimous show of hands vote.

JP Stephenson made motion to approve the Resolution request and forward it to the October 26, 2006 Quorum Court meeting, seconded by JP Schindler. JP Adams commended the Veteran’s Council for the work they have done on behalf of veterans, and requested that they bring the bids for the project to the Quorum Court meeting so that they can be sure that the grant money is enough to cover the cost of the project. Bill Sharp stated that they have an estimate, and will need to have some money before they spend \$5,000 on a design that may not go through. He said they have an architect on their staff who has done a rough estimate. Bob Johnson stated that they also have the services of a landscape engineer, so they are getting a lot of planning done up front.

JP Stephenson stated that he was calling a point of order, that the prevailing discussion has nothing to do with the motion before the body. JP Summers asked if there was any other discussion pertaining to the motion. Motion to forward to Quorum Court passed by unanimous show of hands vote. JP Adams requested a point of personal privilege, stating that he had not objected to the discussion which followed his motion to add the item to the agenda, even though the discussion had nothing to do with the motion. He said that JP Stephenson had then objected when JP Adams asked one question about the Resolution, saying that it did not pertain to the motion. JP Summers apologized to the Court for getting mixed up and not calling for a vote on the original motion.

1. Resolution Request – Waiver of Personnel Policy – Department 05 – Auto Maintenance Supervisor

JP Stephenson made motion that the proposed Resolution, which is not labeled, but is item number one on the agenda, be approved and forwarded to the October 26, 2006 Quorum Court meeting,

seconded by JP Sheridan. JP Stephenson stated that the Resolution is for a waiver in the Personnel Policy, has been discussed at the Personnel and Finance Committee meetings, and is self-explanatory. Motion passed by unanimous show of hands vote.

2. Resolution Request – Waiver of Personnel Policy – Dept. 07 – GIS Project Administrator

JP Stephenson made motion that item number 2 on the agenda be approved and forwarded to the October 26, 2006 Quorum Court meeting, seconded by JP Sampier. JP Stephenson stated that the proposed Resolution is trying to correct the age-old problem of not being able to promote an existing employee up to a pay rate equal to someone hired from the outside. Motion passed by unanimous show of hands vote.

3. Appropriation Ordinance Request – Dept. 05 – Sheriff's Forfeiture Fund

JP Summers stated that this has been through the Finance Committee, and is pretty self-explanatory. JP Sheridan made motion to approve the Resolution and forward it to the October 26, 2006 Quorum Court meeting, seconded by JP Stephenson. JP Summers asked if there was any discussion. JP Wozniak stated that it may not relate to this particular item, but Major Don Townsend is present and he would like to hear a report on some new equipment that the Sheriff's office has obtained. JP Summers asked if this pertained to the motion. JP Wozniak stated that it did not. JP Summers stated that they need to take care of this matter before them first, and then hear a report from Chief Townsend. JP Sheridan asked if Chief Townsend could explain what the money is for. Chief Townsend stated that the funds are from asset forfeitures, and are used to fund the undercover drug operations. Motion passed by unanimous show of hands vote.

Chief Townsend stated that the piece of equipment that JP Wozniak is referring to is a body cooler that the Sheriff's Department has obtained through the Law Enforcement Assistance Program at no cost to the County, although it is considered County property. He said they had been in dire need of it. JP Wozniak asked if the Coroner had purchased a cooler for her office yet. Comptroller Richard McComas stated that it has been purchased. JP Schindler asked how the Sheriff's office uses the cooler. Chief Townsend stated that due to the conflicts with the Coroner's Office, Sheriff Ferguson felt there was an extremely high degree of tainted evidence. He said that any time the Sheriff's Department deals with a body, everything on the body and in the body is considered evidence, and law enforcement needs to maintain control of the body. JP Schindler asked if the bodies are then sent to the State Medical Examiner. Chief Townsend stated that they are. JP Stephenson asked how the bodies are transported. Chief Townsend said that the Medical Examiner usually comes to get them, but occasionally they have to take them to Little Rock. JP Stephenson stated that he is wondering if the County should purchase a refrigerated truck to transport the bodies. Chief Townsend stated that it is OK to transport them in an air conditioned vehicle for the amount of time it takes to get to Little Rock. Comptroller Richard McComas stated for the record that he had no knowledge of the Sheriff's Department purchase since it did not involve the use of County funds. JP Summers asked if the bodies that wind up at the Sheriff's Office are victims of crimes rather than accidents. Chief Townsend stated that if there is any question as to the cause of death or the circumstances surrounding the death, it is treated as a homicide until it is determined to be otherwise. JP Summers asked what other law enforcement agencies were doing. Chief Townsend stated that they all have their own coolers, and basically operate the same way. JP Summers asked if there had been problems before the recent events which are affecting the Coroner's Office. Chief Townsend stated that there had been to a certain extent, and that they had used the coolers at the Bentonville or Rogers Police Departments, and at some funeral homes which had coolers that could be locked. He said that the ideal situation is that once evidence comes into law enforcement custody, it stays there until it has all been retrieved by the medical examiner.

4. Discussion: November/December Quorum Court Meeting Dates

JP Summers stated that the regularly scheduled Quorum Court meeting falls on Thanksgiving Day, and at the Finance Committee meeting they had discussed possibly moving it to November 30, the following Thursday. County Attorney Ed Gartin stated that they will need to act on it formally at the October Quorum Court meeting. JP Sheridan made motion to move the November regular Quorum Court meeting to November 30, and to add this item to the October 26, 2006 Quorum Court agenda, seconded by JP Stephenson. Motion passed by unanimous show of hands vote. JP Summers asked if they would like to discuss the December meeting. JP Tharp stated that it falls on the 28th, so he saw no reason to change it.

5. Discussion: Correct Procedure to Limit Discussion

JP Summers stated that a situation came up at the last Committee of Thirteen meeting where someone called for the question, and he did not recognize them. He said he thought they should talk about the correct way to end discussion.

JP Summers stated that the practice of calling the question is not correct, and that the proper term is to “vote immediately” or to agree beforehand to limit debate. JP Tharp stated that he does not like debate going on to the point that someone becomes frustrated with the debaters, and he does not like the practice of calling the question. He said it depends on which Robert’s Rules of Order book you read, because there are several different versions and his book says that if you call for a vote, that motion has to be passed by two-thirds of the members. He said he has seen the Quorum Court in years past become frustrated with someone and called for a vote, and the motion has passed. He said he is not in favor of limiting debate in any form, because that is what legislators are supposed to do. JP Summers stated that he thought there was only one Robert’s Rules of Order, and it had been adopted by ordinance as the standard for conducting Quorum Court business. JP Tharp stated that there were many versions and books, and the procedural guide is published by the State of Arkansas.

County Attorney Ed Gartin stated that the two motions are for Quorum Court only, and not for Committee meetings. JP Summers asked if they could limit debate in committee meetings. Ed Gartin stated it his recollection of Robert’s Rules of Order was that they could not, because they want the fullest exposition of the issues in committees. He said that in Quorum Court, the Chair could say that someone has already spoken twice, so they should not speak anymore. JP Stephenson stated that he understood that they had adopted an ordinance to conduct business under Robert’s Rules of Order, but asked where they depart from that precedent to the point that they do not apply in a committee meeting. County Attorney Ed Gartin stated that according to Robert’s Rules, certain things apply in legislative meetings that do not apply in committees. JP Stephenson asked if it would be within the privilege of the Justices to make Robert’s Rules of Order applicable to committee meetings. Ed Gartin said they probably could as a practical matter by unanimous consent. JP Summers stated that they have always tried to be more informal at committee meetings. JP Tharp stated that committee meetings should be more informal, and if there is an issue with debate, then the Chair should address it with that member outside the meeting. He said that the ordinance says that they will use Robert’s Rules of Order, but not the procedural guide. County Attorney Ed Gartin stated that Robert’s Rules govern legislative meetings, and the Procedural Guide also takes into account certain statutory requirements of the State. JP Tharp stated that Robert’s Rules does specify how to limit debate, and what irritates him is that there are 13 of them, and they all have voices, and he does not want to be railroaded by a single member calling for a vote. JP Summers stated that one member cannot accomplish that. JP Tharp stated that it has been done, in Quorum Court, in the past. JP Summers stated not that he was aware of.

JP Wolf stated that the Chair of the committee should be able at a certain point in the debate to say that if no new information is being offered, than members should not continue to speak. JP Adams

stated that in any committee, the Chair may entertain a motion that Robert's Rules of Order will be used, and once that motion is passed, Robert's Rules becomes law on that committee. He said that he has seen instances where a person is speaking, and someone has called the question, and the chair has interrupted the speaker to hold a vote. He pointed out that under Robert's Rules of Order, once a person has the floor, they may talk as long as they wish and cannot be interrupted, even by the Chair. He said it has been done many times, not just to him, but to other members of the Court, during Quorum Court meetings. He said he understood that they are county politics, and not national politics, so there has to be a little leeway, but he believes it is quite clear that this body will not use Robert's Rules of Order in its meetings. He said there is no way to achieve that unless they all agree to study it and learn what the rules are. He said a totally new court will take office in January, and he suggested that they hold a course in Robert's Rules of Order so everyone will know what the rules are. He said he was not present at last month's Committee of Thirteen meeting, but knowing JP Tharp's character, he would not have brought it up had it not been important.

JP Allen stated that he cannot wait for 2 ½ more months. JP Sampier seconded. JP Allen stated that he agreed with JP Adams. JP Sheridan stated that there are several publications, and sometimes one book may have a different slant from another book, but he would like to point out that the Procedural Guide is from 1995, and may be a little outdated. He asked if they could look into getting updated versions. He also said that the Arkansas Association of Counties will hold a training session for all new JPs in December, and it would be wise for them to attend. JP Schindler stated that it would be a good idea to hold a training session in January, not only for the Quorum Court, but for other county committees as well. He said at the Planning Committee vote on the Condo issue in November, a 3-3 vote should have been counted as a "no" vote, and the only way another vote should have been held was if the committee voted unanimously to hold one. JP Moore stated that the Organizational Meeting would be a good time to hold a training session. JP Allen asked if they should adopt a specific book of Robert's Rules that they are going to use, because there are several different books. County Attorney Ed Gartin stated that it is specified in the Ordinance, and that he has a 2001 version of the Procedural Guide, and there is not a nickel's worth of difference in it and the 1995 version.

OTHER BUSINESS:

JP Wozniak announced that the proposed Nuisance Abatement Ordinance will be discussed at a Public Hearing at the Planning Board meeting on October 11, 2006, at 8:00 p.m. He asked if it could then return to the Committee of Thirteen, or would it have to come back to the Environmental Committee. County Attorney Ed Gartin stated that it would come back to the Committee of Thirteen. JP Stephenson asked why the ordinance requires a public hearing. County Attorney Ed Gartin stated that it is required by state statutes. JP Stephenson asked where he could get a copy of that statute. County Attorney Ed Gartin stated that he would get one for him.

ANNOUNCEMENTS:

JP Summers announced that the Budget Review meetings will be October 24, 26, and 31, and November 1, 2006 at 2:30 p.m., and the next regular Finance Committee meeting will be November 9, 2006 at 2:30. He welcomed Assistant County Administrator Travis Harp back and said he is glad that he got a good report.

JP Stephenson announced that the Personnel Committee will be meeting October 11, 2006 at 3:00 p.m. to hear personnel requests for the 2007 Budget.

The meeting was adjourned at 6:00 p.m.